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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
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REPLY COMMENTS OF SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION

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Summary

The South Dakota Independent Telephone Coalition ("SDITC") is an organization comprised of 27 small rural local exchange companies providing telephone service in the State of South Dakota. In these reply comments, SDITC submits that the Commission and the Joint Board should build on the existing universal service mechanisms in implementing the new mandates of the 1996 Act. The existing universal service mechanisms have been remarkably successful in enabling small rural telephone companies (such as the members of SDITC) to provide high-quality, cost-effective telecommunications services to rural America, and SDITC strongly opposes the use of other experimental mechanisms proposed in the NPRM as a substitute.

SDITC recognizes, however, that the existing mechanisms may need to be fine-tuned. In particular, if the Commission and the Joint Board determine that a more accurate method is required for targeting universal service support, SDITC proposes the use of *telephone plant investment* which will better reflect the true cost of providing telecommunications services in rural America. Under the existing mechanisms (and particularly with a capped fund), large companies with a multitude of administrative layers are rewarded for such administrative inefficiency with large draws on the universal service fund, whereas efficient, small rural telephone companies (such as the members of SDITC) are penalized for their administrative efficiency by receiving smaller draws on the universal service fund. The Commission and Joint Board can correct this discrepancy by using *telephone plant investment* as the basis for determining high-cost support

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REPLY COMMENTS OF
SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION

The South Dakota Independent Telephone Coalition (SDITC), through its attorneys, hereby submits its reply comments in response to the Federal Communications Commission's March 8, 1996 *Notice of Proposed Rulemaking and Order (NPRM)*, Federal-State Joint Board on Universal Service, FCC 96-93, CC Docket 96-45.

I. Introduction and Summary of Position

SDITC is an organization comprised of 27 small rural local exchange companies (LECs) providing telephone service in the State of South Dakota to approximately 75,333 access lines. Much of the area served by these companies is sparsely populated and entails high-costs of service relative to the rest of the nation. Over the past decade, these rural LECs have established a proven record of providing modern and effective telecommunications services to rural South Dakota. Due to the inordinately high-cost of providing telecommunications services in South Dakota[1], these achievements may not have been possible without the high-cost assistance provided by the Federal Universal Service Fund (USF) and DEM Weighting programs. Indeed, these high-cost programs, which have been extremely successfully in South Dakota, can be said to be a *sine qua non* for these rural LECs and their rural subscribers. The specter of having these proven programs significantly altered or even eradicated, impelled SDITC to file comments and reply comments last fall, in the Commission's previous universal service rulemaking in CC Docket No. 80-286.[2]

SDITC recognizes the necessity of re-examining the existing universal service programs in order to comport them with the new universal service mandates in the 1996 Telecommunications Act (the "1996 Act").[3] Given that these mandates require, among other things, that the nation's public network be upgraded for the provision of advanced services, and that parity be achieved between rural and urban subscribers,[4] SDITC urges the Commission

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[1] South Dakota is one of the least populated states in the country, with fewer than one million residents. Coupled together with its climate, this low-subscriber density makes South Dakota one of the highest-cost areas in the United States in terms of providing telephone service. For example, it is not uncommon for single-party customer loops to be in excess of twenty-five miles in length. As is well-known, the cost of deploying a network with such a topography can be immense. To date, the existing USF and DEM Weighting programs have effectively facilitated the provision of high quality, reasonably priced service to South Dakota's rural customers.

[2] Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Notice of Proposed Rulemaking and Notice of Inquiry*, CC Docket 80-286, (released July 13, 1995).

[3] The Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

[4] See, Section 254(a)(2)(b) of the 1996 Act, which provides, in pertinent part:

(2) ACCESS TO ADVANCED SERVICES -- Access to advanced telecommunications and information services should be provided in all regions of the Nation;

(3) ACCESS IN RURAL AND HIGH COST AREAS -- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably

to strengthen and expand its existing universal service programs to accommodate the new mandates. Accordingly, SDITC opposes any attempt to eliminate or seriously alter the existing support mechanisms which have supported universal service in the past (namely, the USF and DEM Weighting programs, the maintenance of reasonably priced subscriber line charges (SLCs), and common line charges (CCLs)). SDITC submits that these same programs should be used by the Joint Board and the Commission in crafting the new universal service mechanism(s). Indeed, SDITC submits that these programs should be continued and modified only to the extent necessary to accommodate the new mandates of the 1996 Act.

If the Commission nonetheless determines that additional changes need to be made (apart from those explicitly required by the 1996 Act) in order to make universal service support more "explicit",[5] SDITC recommends that the Commission adopt a mechanism that focuses on *telephone plant investment* as the basis for targeting universal service support. SDITC submits that basing the allocation of universal service on telephone plant investment would be an improvement over the present system that, to some extent, rewards inefficiency. More specifically, under the existing mechanism, large companies with inefficient layers of management and unjustifiable overhead expenses have been rewarded by increased draws from the universal service fund. Ironically, under this same mechanism, smaller, more efficient companies, such as SDITC's member companies (which have a greater need for funding), have been receiving a smaller allocation of universal service support; this is especially the case under the presently capped USF. Accordingly, SDITC recommends that if the Commission decides to fine-tune the existing universal service mechanisms (apart from the necessary changes to accommodate the new universal service provisions of the 1996 Act), it should adopt a methodology that focuses on telephone plant investment for purposes of targeting universal

comparable to rates charged from similar services in urban areas.

[5]See, Section 254(e), 1996 Act.

service funding.

The Commission should specifically reject radical, experimental mechanisms such as proxy factors, census block groups, auctions and the like. These proposals could radically undermine universal service, and have little to do with the real-world provision of telephone service.

II. The Commission Should Base its Universal Service Mechanisms On Existing Methodologies, and Not Unproven Methodologies, Such as Proxy Models, Which May Jeopardize Universal Service in Rural America

SDITC submits that the Commission's existing universal service support mechanisms (such as the USF and DEM Weighting programs, and SLC and CCL charges), have been highly successful in meeting the goals of universal service in rural America. In light of the expanded scope of universal service that has resulted from the 1996 Act, SDITC urges the Commission to build its new universal service mechanism(s) on the success of the current mechanisms.[6] SDITC submits that this is the best policy choice given the high risks of the NPRM's experimental proposals (as discussed below), and given the fact that such proposals essentially constitute a solution in search of a problem. Local competition is unlikely to occur in rural America for some time; and although the present system may not be perfect, it has proven itself in facilitating the provision of state-of-the-art telecommunications services in rural areas.

Accordingly, SDITC opposes any suggestion that the USF and DEM Weighting programs should be eliminated or drastically changed. Moreover, SDITC agrees with the United States Telephone Association (USTA) that in order to ensure "affordability" in rural

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[6] SDITC agrees with NECA that existing universal service programs, including Universal Service, Lifeline Assistance, DEM weighting and CCL charges should be maintained with minimal disruption. *NECA Comments* at ii.

areas, these programs must be continued for rural telephone companies. See, *USTA Comments* at ii.

SDITC submits that the proposed alternative methodologies, such as the experimental auction and proxy model proposals, may very well jeopardize the ability of small rural telephone companies to continue to serve rural America.[7] For instance, the proxy model, as designed, is likely to skew the distribution of funds between states.[8] This result, however, would appear to contravene the express requirement of Section 254(b) of the 1996 Act, which provides that access to advanced telecommunications and information services shall be provided to all regions of the nation. Moreover, proxies would place an undue burden on small rural telephone companies, who are not in a position to weather errors in experimental methodologies. And such errors are likely, given the fact that proxies have little to do with providing telephone service in the real-world environment of South Dakota. The Commission would not brook a proposal to provide telephone service that would be less than the genuine article; it should accordingly scuttle the proxy proposal that has nothing to do with genuine costs.

Although SDITC does not believe that proxy models are an appropriate compensation mechanism, SDITC agrees with NECA that if proxies are used, they should be limited to larger

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[7] SDITC notes that RTC, a coalition of the leading small telco trade associations, neither supports any substitution of hypothetical cost model(s) in the stead of actually incurred, real costs. RTC asserts that the validity of these models has not been tested and ascertained, and states that if any of these models are adopted, it may well be necessary to establish more than one fund. *RTC Comments* at pg. iv. NECA notes that the Commission should continue to use cost-based accounting to identify universal service funding requirements. *NECA Comments* at 6.

[8] See, *SDITC Comments*, CC Docket 80-286 at pg. 26.

companies.[9] As NECA points out, the extreme variation of costs between small rural company study areas cannot be captured by proxy models. See, *NECA Comments* at 6. Therefore, if the Commission were to adopt a proxy model, SDITC urges the Commission to limit its applicability to other than small company study areas.

As a related matter, SDITC agrees with the RTC that the definition of "service area" for purposes of applying the eligible carrier qualification rules of Section 214(e) of the 1996 Act, need not be changed to implement the 1996 Act. See, *RTC Comments* at 10. As RTC explains, Congress established a number of safeguards in the 1996 Act to protect against cream skimming. Id. For purposes of determining universal service obligations and support mechanisms, one such safeguard, Section 214(e)(5), requires use of a rural telephone company's "service area" unless and until the Commission and the States, after taking into account recommendations of the Joint-Board, establish a different definition of service area. Id. Notwithstanding the clear language of the statute, the NPRM seeks comment on whether to redefine rural LEC study areas.[10] SDITC agrees with RTC that this issue is superfluous since Section 214(e) confirms that the definition of "study area" must be retained, unless and until the necessary findings have been made by the Commission, and appropriate State authorities. Id.

SDITC also supports NECA, who suggests that the FCC's rules implementing Section 214 of the 1996 Act should make clear that universal service support amounts would be available only to designated eligible carriers that actually serve entire service areas, not simply portions thereof or selected high-volume customers. See, *NECA Comments* at 8. This is

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[9] NECA recommends for smaller companies, the use of cost study data, which is the only proven method for determining sufficient levels of universal service support See, *NECA Comments* at pg. 11.

[10] See, NPRM at ¶ 45.

because in areas served by rural telephone companies, state commissions have discretion under the 1996 Act to designate more than one carrier as "eligible" where it would be in the public interest to do so. This circumstance requires guidance from the Commission, given the possibility that state authorities may allow eligible carriers to provide service in a manner that is at odds with maintaining reasonably priced telephone service.

III. If the Commission Determines to Change the Existing Universal Service Mechanisms, it Should Adopt a Methodology that Focuses on Telephone Plant Investment for Purposes of Better Targeting USF Funding

In its reply comments last fall (CC Docket No. 80-286), SDITC proposed an alternative methodology for calculating the universal service support. The primary goal of this methodology is to target USF cost recovery to those local service providers who invest in, and deploy, state-of-the-art telecommunications facilities in high cost areas. In order to make existing and future Information Superhighway services available to all people in all parts of the United States (including rural areas), the USF should promote efficient investment by local service providers in fiber optic, coaxial cable, radio and other state-of-the-art loop facilities, and should encourage carriers making such investments to provide the resulting services at reasonable rates.

Although SDITC does not agree that radical changes, (such as those proposed in the NPRM), are necessary to implement the new 1996 Act, SDITC does support a "fine-tuning" of the existing mechanisms. Specifically, SDITC believes that the current mechanism does leave room for rewarding resource expenditures that are only remotely connected to the provision of actual telephone service. The allocation of layers of management to loop costs is one example with which SDITC's members are familiar. For example, one SDITC member purchased a rural telephone property, within South Dakota, from a Tier-1 telephone company. Purely due to management efficiencies, and the lack of corporate overhead, the USF allocation for this property has declined dramatically since the purchase of the property. Specifically, the

USF associated with the property since the purchase has declined from over $500,000 to approximately $50,000, annually. SDITC believes that USF monies of this sort can be better spent in actually providing high quality, reasonably priced telephone service, as all of SDITC's members currently provide. Thus, any changes the Commission makes in the USF mechanism should favor those companies whose investment efforts have been geared to telephone plant.

SDITC submits that, as part of any such fine-tuning, the Commission should also take exchange carrier size into account. This consideration would recognize that larger companies can take advantage of economies of scale and scope, and that smaller companies have a relatively greater need for these funds. This is particularly the case where, as in the present, the USF fund is capped, and finite resources are diverted away to Tier-1 LECs.

Thus, although SDITC's members do not endorse the potentially disruptive changes to the USF and high cost support mechanisms as outlined in the NPRM such as proxy mechanisms, census block groups and common line revenue dislocations, some fine-tuning of the USF mechanism itself may be in order. SDITC believes that any such fine-tuning should reward companies for the investments they make to provide quality service in high cost, rural America.

IV. Goals and Principles of Universal Service Support Mechanisms Identified in the NPRM

Apart from the six principles enunciated in Section 254(b) of the 1996 Act, SDITC recommends that the Commission recognize that local competition will not, for the most part, take root in rural America.[11] Consistent with this recognition, the Commission should craft rules that will ensure that rural telephone companies are not deprived of their ability to provide universal service to rural America. For example, the Commission's rules should guard against any unwarranted drop in high-cost funding and the offering of service on a selective basis by would-be competitors (i.e., cream-skimming).[12] The Commission should also explicitly recognize the important role that rural telephone companies have played, and will continue to play in upgrading rural America's telecommunications infrastructure.[13]

In this regard, SDITC submits that adoption of the NPRM's "competitive neutrality" principle would be inconsistent with the 1996 Act, if it were to be applied blindly. Also see, *RTC Comments* at i. That is, the strict application of this principle would appear to contravene the explicit Congressional recognition that, at least in rural areas, special consideration must be

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[11] In the context of South Dakota, for example, it is unlikely that would-be competitors would show interest in demographics that would require twenty-five mile and greater subscriber loop lengths. See also, *Blountsville Telephone Company Comments* at pg. 4 (noting that incumbent LECs have historically been and will continue to be for the foreseeable future, the carrier of last resort in rural areas).

[12] As SDITC has noted in prior comments, rural telco revenue support has already been significantly eroded by virtue of federal bypass and interconnection policies. The recent spate of Bell Company and GTE rural exchange sales confirms this view. See, *SDITC Comments* at pg. 4 (CC Docket No. 80-286).

[13] The Commission has recognized on numerous occasions the important role that rural telephone companies play in upgrading rural telecommunications infrastructure. See, Accent Communications, Inc., et. al., *Memorandum Opinion and Order*, DA 96-570 (released Apr. 11, 1996)(Commission found that the public interest was served because 19 small telephone companies would serve customers in South Dakota better than US West); US West Comm. Inc., and Eagle Telecom., *Memorandum Opinion and Order*, 10 FCC Rcd 1771, 1774 (Jan., 5, 1995) (Commission found that the public interest was served because Eagle Telecom would better serve customers than US West); US West Comm., Inc., and South Central Utah Tele. Assoc., Inc., *Memorandum Opinion and Order*, 9 FCC Rcd 198, ¶ 4 (Dec. 29, 1993)(noting that South Central will replace existing electromechanical switches, upgrade 8-party lines to private lines and serve previously unserved areas more rapidly than US West); US West Comm., Pacific Telecom, Inc. and Telephone Utilities of Eastern Oregon, Inc., *Memorandum Opinion and Order*, Daily Digest, AAD 94-69, ¶ 7 (released Aug. 11, 1995); US West Comm. and Gila River Tele., Inc., *Memorandum Opinion and Order*, 7 FCC Rcd 2161, 2162-3 (released Mar. 24, 1992).

given to the different economic situations where competition would be expected to serve only the "cream" of the market. Id. Toward this end, Congress adopted specific restrictions on competition in rural areas: i.e., Sections 214(e) and 251 through 253 of the 1996 Act. In fashioning the new mechanism(s), the Commission and Joint Board, must do the same. Therefore, the principle of "competitive neutrality" should, if adopted by the Commission, be applied so as to not eviscerate this overriding Congressional principle: i.e., that rural customers not be harmed by the blind application of competitive precepts.

Finally, as a matter of the NPRM's apparent perspective, SDITC strongly urges the Commission to reject the recurring notion that universal service is a "subsidy". This appears to be a recurring theme that influences the NPRM's proposals. For instance, in paragraphs 27-39, the NPRM seeks comment on "How to Calculate the Subsidy"; and in paragraph 40, the NPRM seeks comment on whether a transition period is needed for carriers, "particularly recipients of subsidies". As SDITC explained in its comments submitted last fall, universal service support is not a subsidy, but is simply the quid pro quo for artificially capping at 25% those common costs which the U.S. Supreme Court has required to be allocated between the interstate and intrastate jurisdictions. See, Smith v. Illinois Bell Tele. Co., 282 U.S. 133 (1930). Indeed, in 1984, the Commission explicitly rejected an argument by MCI that these costs were a subsidy.[14] Nothing has changed about these costs to transform them into a subsidy now, except perhaps the expediency to justify some of the NPRM's proposals. The Commission should recognize that the current mechanism is not a "hand out".

[14] See, *Decision and Order*, 96 FCC 2d 781, 789 (1984)(The Commission noted that "Interjurisdictional subsidy questions cannot arise in the apportionment of the commonly used non-traffic sensitive plant or associated expenses because the costs that are attributable to either jurisdiction cannot be identified.")

V. Conclusion

SDITC submits that the Commission and the Joint Board should build on the existing universal service mechanisms in implementing the new mandates of the 1996 Act. The existing universal service mechanisms have been remarkably successful in enabling small rural telephone companies (such as the members of SDITC) to provide high-quality, cost-effective telecommunications services to rural America, and SDITC strongly opposes the use of other experimental mechanisms proposed in the NPRM as a substitute.

SDITC recognizes, however, that the existing mechanisms may need to be fine-tuned. In particular, if the Commission and the Joint Board determine that a more accurate method is required for targeting universal service support, SDITC proposes the use of *telephone plant investment* which will better reflect the true cost of providing telecommunications services in rural America. Under the existing mechanisms (and particularly with a capped fund), large companies with a multitude of administrative layers are rewarded for such administrative inefficiency with large draws on the universal service fund, whereas efficient, small rural telephone companies (such as the members of SDITC) are penalized for their administrative efficiency by receiving smaller draws on the universal service fund. The Commission and Joint Board can correct this anomaly, by using *telephone plant investment* as the yardstick for measuring the true level of required high-cost support.

Respectfully submitted,

The South Dakota Independent Telephone Coalition

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Dated: May 7, 1996

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I Rose Ann McDonald, do hereby certify that copies of the foregoing "Reply Comments of the South Dakota Independent Telephone Coalition" were served this 7th day of May, 1996, by hand delivery or postage paid to the following parties:

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